

# Order

Entered: December 20, 2002

Michigan Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

2001-06

Redesignation of Rule 3.220 of the  
Michigan Court Rules as Rule 2.004

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, Rule 3.220 of the Michigan Court Rules was adopted on November 1, 2002, to be effective January 1, 2003. The rule is hereby amended and renumbered Rule 2.004, effective January 1, 2003, to clarify the scope of the rule and to eliminate other potential confusion.

[The new language is as indicated below.]

## Rule 2.004 Incarcerated Parties

### (A) This rule applies to

- (1) domestic relations actions involving minor children, and
- (2) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights,

in which a party is incarcerated under the jurisdiction of the Department of Corrections.

### (B) The party seeking an order regarding a minor child shall

- (1) contact the department to confirm the incarceration and the incarcerated party's prison number and location;
- (2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and

- (3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule.
- (C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, the court shall issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.
- (D) All court documents or correspondence mailed to the incarcerated party concerning any matter covered by this rule shall include the name and the prison number of the incarcerated party on the envelope.
- (E) The purpose of the telephone call described in this rule is to determine
  - (1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,
  - (2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,
  - (3) whether the incarcerated party is capable of self-representation, if that is the party's choice,
  - (4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and
  - (5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.
- (F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call, or if the court determines that immediate action is necessary on a temporary basis to protect the minor child.

- (G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

Staff Comment: MCR 2.004, effective January 1, 2003, is based on a proposal made in conjunction with the settlement agreement in the Court of Claims of that portion of *Cain v Dep't of Corrections*, 88-61119-AZ, 93-15000-CM, and 96-16341-CM, that pertains to women prisoners. The rule initially was adopted in November 2002 as MCR 3.220, but was amended and renumbered as Rule 2.004 in December 2002 to clarify the scope of the rule and to eliminate other potential confusion.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.